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7 **UNITED STATES DISTRICT COURT**
8 **CENTRAL DISTRICT OF CALIFORNIA**
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10 AF HOLDINGS LLC,
11 Plaintiff,
12 v.
13 JOHN DOE,
14 Defendant.

Case No. 2:12-cv-6637-ODW(JCx)
ORDER DISMISSING CASE

15 Under Federal Rule of Civil Procedure 4(m), a defendant must be served within
16 120 days after the complaint is filed, or else the Court “must dismiss the action
17 without prejudice.” Fed. R. Civ. P. 4(m). This action commenced on August 1, 2012.

18 On December 20, 2012, the Court ordered Plaintiff to show cause why it failed
19 to timely serve the Defendant; or if the Defendant has already been served, to submit
20 the proof of service. (ECF No. 16.)

21 In response, Plaintiff noted that the delay was because it lacked the means to
22 identify John Doe. (ECF No. 17.) Without early discovery and without the
23 cooperation of the responsible ISP, Plaintiff argues that it could not proceed in this
24 case with just an IP address. Plaintiff also contends that the 120-day service deadline
25 should not serve as an outer limit, but rather as a guideline. *Henderson v. United*
26 *States*, 517 U.S. 654, 661 (1996).

27 If a plaintiff shows good cause for the delay, the court must extend the time for
28 service. Fed. R. Civ. P. 4(m). And a court has discretion to extend the time for

1 service even in the absence of good cause. *Efaw v. Williams*, 473 F.3d 1038, 1040
2 (9th Cir. 2007). Nevertheless, that discretion is not limitless. *See id.* at 1041.

3 Here, the Court finds that Plaintiff's technological problem of identifying John
4 Doe does not suffice for good cause. First, the Court is not convinced that that there is
5 no way of identifying John Doe through an IP address other than obtaining ISP
6 subscriber information—Plaintiff has presented nothing but argument suggesting that
7 it is so. Second, as outlined in the Court's October 19, 2012 Order vacating early
8 discovery orders, it is dubious whether Plaintiff will be able to identify the actual
9 infringer even if Plaintiff is given the subscriber information for the IP address—in
10 other words, the actual infringer may not be the subscriber, but rather someone else.
11 And third, possession of nothing other than an IP address alone suggests the lack of a
12 good faith basis to bring a copyright infringement lawsuit. *See e.g.*, Fed. R. Civ.
13 P. 11(b)(2), (3).

14 Upon review the docket and the circumstances of this case, the Court concludes
15 that this delay stems from either Plaintiff's lack of diligence, or its impatience in
16 rushing to the courthouse. Plaintiff filed its Complaint 176 days ago. Given that
17 passage of time and the lack of good cause, the Court finds no reason to extend the
18 120-day limit for service under Rule 4(m).

19 Accordingly, this case is dismissed without prejudice. The Clerk of Court shall
20 close this case.

21 **IT IS SO ORDERED.**

22 January 25, 2012

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26 **OTIS D. WRIGHT, II**
27 **UNITED STATES DISTRICT JUDGE**
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